

**NORTH CAROLINA SHERIFFS' EDUCATION AND TRAINING
STANDARDS COMMISSION**

PROPOSED RULE AMENDMENT

12NCAC 10B .0305 Background Investigation

Public Hearing

02/18/2021 10:00am
1700 Tryon Park Drive
Raleigh, NC 27610

Full Commission Vote

April 13, 2021
Teleconference Meeting



Instructions for Oral and Written Comments

The public comment period begins on January 25, 2021, and ends at 5:00 p.m. on April 5, 2021. Public comments shall be in writing and shall be directed to:

Diane Konopka
North Carolina Department of Justice
Sheriffs' Education and Training Standards Division
Post Office Box 629
Raleigh, NC 27602-0629

"Public comment" is defined by NCGS 150B-21.3A(a)(5) as a written objection to all or part of a rule. Additionally, pursuant to NCGS 150B-21.3A(c)(2), in order for the Rules Review Commission to determine whether the public comment has merit, the public comment must address the specific substance of the rule and address any of the standards of Commission review, as set forth in NCGS 150B-21.9(a).

Statutory Authority for Proposed Rules Changes: NCGS 17E: On December 11, 2020, the North Carolina Sheriffs' Education and Training Standards Commission proposed an amendment to 12NCAC 10B .0407 to further clarify the process for a former elected or appointed Sheriff to obtain justice officer certification upon leaving office.

Fiscal Impact: None

*****If approved, change would be effective June 1, 2021****

Procedure for Subjecting a Proposed Rule to Legislative Review:

If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.



NOTICE OF TEXT

[Authority G.S. 150B-21.2(c)]

OAH USE ONLY

VOLUME:

ISSUE:

CHECK APPROPRIATE BOX:

☒
☐
☐

Notice with a scheduled hearing

Notice without a scheduled hearing

Republication of text. Complete the following cite for the volume and issue of previous publication, as well as blocks 1 - 4 and 7 - 14. If a hearing is scheduled, complete block 5.

Previous publication of text was published in Volume: Issue:

1. Rule-Making Agency: Sheriffs' Education and Training Standards Commission

2. Link to agency website pursuant to G.S. 150B-19.1(c): <https://ncdoj.gov/law-enforcement-training/sheriffs/all-commission-forms-publications/>

3. Proposed Action -- Check the appropriate box(es) and list rule citation(s) beside proposed action:

☒ ADOPTION: 12 NCAC 10B .0305

☐ AMENDMENT:

☐ REPEAL:

☐ READOPTION with substantive changes:

☐ READOPTION without substantive changes:

☐ REPEAL through READOPTION:

4. Proposed effective date: 06/01/2021

5. Is a public hearing planned? Yes

If yes:

Date	Time	Location
02/18/2021	10.00am	1700 Tryon Park Drive, Raleigh, NC 27610

6. If no public hearing is scheduled, provide instructions on how to demand a public hearing:

7. Explain Reason For Proposed Rule(s):

To add newly required form AOC-CR-280 to list of background documents required for certification.

8. Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or email. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 984-236-1850.

Rule(s) is automatically subject to legislative review. Cite statutory reference:

9. The person to whom written comments may be submitted on the proposed rule(s):

Name: Diane Konopka
Address: Post Office Box 629
Raleigh, NC 27610
Phone (optional):
Fax (optional):
EMail (optional) dkonopka@ncdoj.gov

10. Comment Period Ends: 04/05/2021**11. Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.**

No fiscal note required

12. Rule-making Coordinator:

Name: Diane Konopka
919-662-4375
dkonopka@ncdoj.gov

Agency contact, if any:

Name:
Phone:
Email:

13. The Agency formally proposed the text of this rule(s) on

Date: 12/11/2020

1 **12 NCAC 10B .0305 IS PROPOSED TO BE AMENDED AS FOLLOWS:**

2
3 **12 NCAC 10B .0305 BACKGROUND INVESTIGATION**

4 (a) Prior to the background investigation conducted by the employing agency to determine the applicant's suitability
5 to perform essential job functions, the applicant shall complete the Commission's Personal History Statement (F-3)
6 to provide a basis for the investigation. The Personal History Statement (F-3) submitted to the Division shall be
7 completed no more than 120 days prior to the applicant's date of appointment.

8 (b) If the Personal History Statement (F-3) was completed more than 120 days prior to the applicant's date of
9 appointment, the Personal History Statement (F-3) shall be updated by the applicant who shall initial and date all
10 changes or a new Personal History Statement (F-3) must be completed.

11 (c) The employing agency shall ensure the proper dates, signatures, and notarizations are affixed to the Personal
12 History Statement (F-3); and shall also certify that the results of the background investigation are consistent with the
13 information provided by the applicant on the Personal History Statement (F-3), and if not, provide the applicant the
14 opportunity to update the F-3 prior to submission to the Division.

15 (d) The employing agency, prior to employment, shall examine the applicant's character traits and habits relevant to
16 his/her performance as a justice officer and shall determine whether the applicant is of good moral character as
17 defined in Rule .0301(a)(8). The investigator shall summarize the results of the investigation on the Commission-
18 mandated Background Investigation Form (F-8) which shall be signed and dated by the investigator.

19 (e) The Background Investigation Form (F-8) shall include records checks from:

- 20 (1) a state-wide search of the Administrative Office of the Courts (AOC) computerized system;
21 (2) the national criminal record database accessible through the Division of Criminal Information
22 (DCI) network;
23 (3) the North Carolina Division of Motor Vehicles, if the applicant has ever possessed a driver's
24 license issued in North Carolina; and
25 (4) out-of-state motor vehicles check obtained through the Division of Criminal Information or
26 obtained through the any other state's Division of Motor Vehicles if the applicant held a license in
27 that State(s) within the 10 year period prior to the date of appointment.

28 (f) The Background Investigation must also include records checks from jurisdictions in which the applicant resided
29 within the 10 year period prior to the date of appointment and where the applicant attended high school, as follows:

- 30 (1) Where the applicant resided in jurisdictions in North Carolina, Clerk of Court records checks are
31 acceptable;
32 (2) Where the applicant resided in another country, an Interpol records check is acceptable provided
33 the country is a member of Interpol; or if the applicant was in the United States military, a military
34 records check is acceptable; or if neither, efforts shall be made and documented to attempt to
35 obtain a records check from the country and submitted if available; and
36 (3) Where the applicant resided in a State other than North Carolina, a records check through the
37 Division of Criminal Information using the IQ inquiry is acceptable provided the State will

1 respond to that type of inquiry; or if not, then either a records check response from both the
2 municipality, city or town where the applicant resided and the county-wide Sheriff's Office or
3 Police Department obtained through traditional correspondence; or a records check from the
4 appropriate county-wide or state-wide record holding agency is acceptable.

5 (g) If the applicant had prior military service, the Background Investigation must also include a copy of the
6 applicant's DD214 which shows the characterization of discharge for each discharge which occurred and military
7 discipline received, if any. If the DD214 indicates a discharge characterization of any type other than Honorable,
8 then a military records check is also required.

9 (h) All records checks shall be performed on each name by which the applicant for certification has ever been
10 known since the age of 12. If the applicant has had an official name change which occurred after the applicant had
11 reached the age of 12 years of age, then documentation of that name change is required.

12 (i) The employing agency shall forward to the Division certified copies of any criminal charge(s) and disposition(s)
13 known to the agency or listed on the applicant's Personal History Statement (F-3). The employing agency shall
14 explain to the satisfaction of Division staff that charges or other violations which may result from the records checks
15 required in Paragraph (e) of this Section do not pertain to the applicant for certification. This documentation shall be
16 included with all other documentation required in 12 NCAC 10B .0408.

17 (j) The employing agency shall include a signed and notarized Release Authorization Form which authorizes the
18 Division staff to obtain documents and records pertaining to the applicant for certification which may be required in
19 order to determine whether certification may be granted.

20 (k) The employing agency shall provide the results of a completed and processed form AOC-CR-280, Law
21 Enforcement Application for Verification of Expunction under G.S. 15A-145.4, 15A-145.5, 15A-145.6, 15A-
22 145.8A OR 15A-146, for each applicant presented for certification.

23
24 *History Note: Authority G.S. 17E-7;*

25 *Eff. January 1, 1989;*

26 *Amended Eff. January 1, 2010; January 1, 2009; January 1, 2007; August 1, 2002; January 1,*
27 *1994; January 1, 1993; January 1, 1992; January 1, 1990;*

28 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6,*
29 *2018.*

30 *Amended Eff. 6/1/2021*
31